

COURT'S ORDER WHETHER THE CASE IS OR IS NOT
APPROVED FOR REPORTING
[Chapter VIII, Rule 32(2) (b)]
Description of case

**Criminal Appeal No. 824 of 2001
(Old No. 2251/1988)**

decided on: 11th May, 2005

1. Hansa Dutt
S/o Madhavanand
 2. Ganga Dutt
S/o Madhavanand
Both resident of Kasnauli,
Patti Devdar, Distt. Nainital
- Appellants

Versus

State of Uttaranchal

.....Respondent

A.F.R. (Approved for Reporting)
~~Not approved for Reporting~~

Date 11.05.2005

(Hon. Mr. Justice Irshad Hussain)

(Hon. Mr. Justice Prafulla C. Pant)

Reserved

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Appeal No. 824 of 2001
(Old No. 2251/1988)

1. Hansa Dutt
S/o Madhavanand
2. Ganga Dutt
S/o Madhavanand
Both resident of Kasnauli,
Patti Devdar, Distt. Nainital Appellants

Versus

State of Uttaranchal Respondent
Shri Lokendra Dobhal, learned Counsel for the Appellant.
Shri A. Rab, learned A.G.A. assisted by Shri M.A. Khan brief holder for the
State.

Corum: Hon Mr. Justice Irshad Hussain
Hon. Mr. Justice Prafulla C. Pant

Per: Hon'ble Prafulla C. Pant, J.

This Criminal Appeal, preferred under Section 374 (2) of Code of Criminal Procedure, 1973 (herein after for brevity Cr.P.C.), is directed against the judgment and order dated 26.09.1988, passed by the then learned IIIrd Additional Sessions Judge, Nainital in Sessions Trial No. 75 of 1987, whereby appellants have been convicted under Section 304 Part-I read with Section 34 of Indian Penal Code, 1860 (herein after for brevity I.P.C.), and sentenced each one of them to undergo imprisonment for life and also to pay fine of Rs. 5,000/- in default of payment of which it is directed to each one of them to undergo six months simple imprisonment.

2. We heard Shri Lokendra Dobhal, Amicus Curiae and learned Additional Government Advocate at length.

3. In brief, the prosecution story is that 13.11.1985, Mohan Chandra Dani (P.W. 1) resident of village Kashtauli, Patti Deodaran District Nainital, lodged First Information Report (Exh. A-1) of the Patti Patwari, alleging that on 12.11.1985, at about noon, his father Jai Datt Dani (deceased) was proceeding towards his garden. He had some altercation with his brother namely, Hansa Datt and Ganga Datt (both appellants) on which they caused grievous injuries to their brother Jai Datt who consequently died in the evening. On the basis of said report, a check report (Exh. A-3) was prepared by the Patti Patwari, Deodaran (In the Uttaranchal hills certain Patwaris are given police powers). Shri Surendra Singh (P.W. 5), the Investigating Officer, proceeded for investigation and prepared the inquest report (Exh. A-2) before the witnesses on 15.11. 1985. After preparing diagram of the dead body (Exh. A-11/1 & Exh. A-11/2), Police form No. 13 (Exh. A-9), letter to the Chief Medical Officer (Exh. A-10), he sent the dead body on 15.11.1985 along with the sample seal (Exh. A-12) for post-mortem of the dead body to the district headquarters.

4. On 16.11.1985, Dr. H.C. Bhatt (P.W.6) conducted autopsy and prepared the post-mortem report (Exh. A-14). During the post-mortem examination, the Medical Officer has observed that the dead body was four days old and was that of a 51 years average built person. He has further observed that it was in a decomposed condition. Nails, skin etc could be peeled off. Following

ante-mortem injuries were recorded by the Medical Officer:-

- 1. Lacerated wound size 10cm x 3cm x bone deep on the right side of the skull 10cm above right ear and 15 cm from hair line front.**
- 2. Multiple wounds size 1cm x 1cm skin deep on right side of the leg.**
- 3. Multiple wounds 3 in number on back size of the left leg size 1.5cm x .75 cm.**
- 4. Contusions 1cm x 1cm on back side of left arm upper lower area. 3 in number.**

On internal examination, parietal bone was found fractured. In the membrane, meninges lacerated. Brain lacerated, clotted blood present. Spinal cord not open. Stomach empty. Small intestine found containing gases. Large intestine found containing gases and faecal matter. Liver 2 pounds 6 ounces, kidney 6 ½ ounces, spleen 3 ounces and bladder empty. In the opinion of the Medical Officer, cause of death was shock and haemorrhage due to ante-mortem injuries.

5. On completion of the investigation, the Investigating Officer submitted the chargesheet (Exh. A-13) against both the accused Hansa Datt and Ganga Datt for their trial, for allegedly committing offence punishable under Section 302 I.P.C. The chargesheet accompanied with the aforesaid said earlier documents and also site plan (Exh. A-7 and Exh. A-8), recovery memo of the blood stained soil (Exh. A-4) and recovery

memo of sample soil (Exh. A-5), recovery memo of the weapon (Exh. A-6) was received and registered by the concerned Magistrate, who after giving necessary copies to the appellants, committed the case to the court of Sessions. It appears that learned Sessions Judge transferred the case for trial to the court of IIIrd Additional Sessions Judge, Nainital. The said court, after hearing the parties, framed charge against both the accused/appellants regarding the commission of offence punishable under Section 302 read with Section 34 of I.P.C. to which they pleaded no guilty and claimed to be tried. Thereafter prosecution got examined P.W. 1 Mohan Chandra (eye-witness) minor son of the deceased, P.W. 2 Nandan Singh (declared hostile), P.W. 3 Naveen Chandra (eye-witness) another son of the deceased, P.W. 4 Chandan Singh (eye-witness), P.W. 5 Shri Surendra Singh (Investigating Officer) and P.W. 6 Dr. H.C. Bhatt (who conducted the post-mortem examination). The oral and documentary evidence was put to the appellants under Section 313 of Cr.P.C. by the learned Trial Court to which they alleged to be false. The learned IIIrd Additional Sessions Judge, Nainital, after going through the record and hearing the parties, found the appellants guilty of the offence punishable under Section 304 (Part-I) read with Section 34 of I.P.C. and sentenced them as mentioned earlier. Aggrieved by which this appeal has been preferred.

6. On perusal of the evidence on record, we found that P.W. 1 Mohan Chandra, minor son of the deceased, has stated on oath before the learned trial court that on 12.11.1985, it was day of Diwali when he along with his brother Naveen Chandra (P.W. 3) was working in their field. Their uncles Hansa Datt and Ganga Datt (both

appellants) were working in other fields. He further states that appellant Ganga Datt called him and asked him to call his father. On this, Jai Datt (deceased) father of this witness came to the place where appellant Ganga Datt was working in his field. The appellant Hansa Datt was two fields above said field. The witness further states that thereafter appellant Ganga Datt asked appellant Hansa Datt to get hold of the deceased and both of them started beating Jai Datt (deceased). P.W. 1 Mohan Chandra further stated that the appellants gave blows to his father with 'GAINTI' and 'KUDAL' (agricultural equipments) and 'DANDA. This witness further states that his father started profusely bleeding and fell down. P.W. 1 Mohan Chandra further states that he poured some water on the injuries of the deceased and applied some 'BICCHU GHAAS' (nettle prickly plant). Thereafter, the witness states that both the accused and witnesses Nandan Singh (P.W. 2), Chandan Singh (P.W. 4) and one Pritam Singh jointly took his father to his home. P.W. 1 Mohan Chandra has stated that the incident took place about noon. The witness further narrates the story and says that by 7:00 P.M. in the evening his father died. This witness states that next morning, his brother Naveen Chandra (P.W. 3) went to call his brother-in-law from Garam Paani and they lodged the First Information Report (Exh. A-1) with the Patti Patwari.

7. P.W. 2 Nandan Singh has stated that on the day of the incident, he was working as labour of the appellant Ganga Datt. He further states that when Jai Datt came there, he objected to Ganga Datt that why he was getting work done in his field. Thereafter the witness states that

both Hansa Datt and Ganga Datt started quarrelling with Jai Datt and Hansa Datt with a DANDA gave blows on the leg of Jai Datt and Ganga Datt held Jai Datt by his waist. The witness thereafter states he got frightened and ran away. This witness was got declared hostile and in cross-examination he narrated all details of the prosecution story. P.W. 3 Naveen Chandra another son of the deceased also corroborates what has been stated by P.W. 1 Mohan Chandra. P.W. 4 Chandan Singh is another labour who was working for the appellants in the field. He too corroborated the prosecution story as narrated by P.W. 1 Mohand Chandra.

8. The ocular evidence recorded by the trial court shows that there are four eye-witnesses of the incident, two of them sons of the deceased and remaining two were working as labourers of the appellants. Their presence in the village at the time of incident is natural and trust-worthy. Prosecution story as narrated by the eye-witnesses also gets corroborated by the ante-mortem injuries recorded in Exh. A-14 by P.W. 6 Dr. H.C. Bhatt who conducted the post-mortem examination. P.W. 6 Dr. Bhatt has stated that the death could have occurred on 12.11.1985 at 7:00 P.M. He further states that the ante-mortem injuries could have been caused by articles Exhibits I to Exhibit IV. P.W. 5 Shri Surendra Singh, Patwari-the Investigating Officer has stated that during investigation, he collected the agriculture equipments GAINTI (Exh. 1), KASSI (Exh. 2), KUDAL (Exh. 3) and DANDA (Exh. 4) which was used in the crime in question.

9. On behalf of the appellants, it is argued that the First Information Report is highly delayed. However, we

are of the view that the delay in lodging the First Information Report is well explained for the reason that during the month of November, days are short and death has occurred at 7:00 P.M. by then it is already dark during that month. It is not reasonable to expect that minor sons would go in the darkness to Patti Patwari, Deodaran to lodge the F.I.R. Exh. A-3 check report of the F.I.R. shows that the distance between the Patti Deodaran from the village where the incident has taken place is 10 Kms. There is no evidence that it was connected by road or by conveyance was available in hilly village. At the time of recording of evidence, P.W. 3 Naveen Chandra was aged 18 years and P.W. 1 Mohan Chandra was aged 16 years. As such on the day of the incident, both were minors. In the circumstances, the delay in F.I.R. is well explained and does not create any doubt as to the truthfulness of the prosecution story.

10. Shri Lokendra Dobhal, learned Counsel for the appellant further argued that F.I.R. does not contain the names of witnesses and other details. We are of the view that F.I.R. has been written by a young minor villager, aged 14 years at his home and it cannot be expected of him that he knew that such details are also required to be mentioned in the F.I.R. As such in the circumstances of the case, even non-mentioning of the names of the other witnesses is not fatal to prosecution case.

11. It is also argued on behalf of appellants that even if the witnesses should be believed, the offence if any committed by the appellants, come under Section 304 (Part-II). We are in agreement with this submission of the learned Counsel for the appellants for the reason that the appellants were not armed with lethal weapon nor

appear to have intention to kill their brother. The conduct of the appellants as narrated by the P.W. 1 Mohan Chandra shows that they (appellants) also helped after commission of the offence to take the injured Jai Datt (deceased) to his home. There is only one injury over the vital part i.e. ante-mortem injury no. 1, as mentioned above, which has resulted in the death of the injured. Considering all these aspects, we feel that though both the appellants have with common intention caused injuries, recorded as ante-mortem injuries in the post-mortem report. The said injuries does not appear to have been caused with intention to cause death. However, the act of the appellants do fall under the category of culpable homicide not amounting to murder and the act committed by the appellants with common intention was such that it was with knowledge that it was likely to cause death but without any intention to cause death. As such the appellants should have been convicted under Section 304 (Part-II) instead of under Section 304 (Part-I), I.P.C. It is also pertinent to mention here that the offence committed by the appellants was not a planned one, rather it is covered under exception I of Section 300 which provides that culpable homicide is not murder if the offender whilst deprived of the power of self-control by grave and sudden provocation, causes death of the person who gave the provocation. P.W. 1 Mohan Chandra himself has stated that when his father (Jai Datt) was called in the field, it was Jai Datt who objected to Ganga Datt to his working in the field in which appellant Hansa Datt joined appellant Ganga Datt in the sudden quarrel and committed the crime.

12. In view of the above discussions, we are in agreement with the findings of the learned trial court that prosecution has successfully proved that appellants have caused death of Jai Datt on 12.11.1985 by giving him blows of GAINTI, KUDAL and DANDA. However, we do not endorse the view of the learned trial court that the offence committed by the appellants is covered under Part-I of Section 304 I.P.C., instead we feel that the offence committed by the appellants comes within the Part-II of the Section 304 of I.P.C Therefore, the appeal deserves to be allowed partly. Accordingly, the appeal is partly allowed. Both the appellants are convicted under Section 304 Part-II instead of under Section 304 Part-I I.P.C. Each of the appellants Hansa Datt and Ganga Datt, is sentenced to five years rigorous imprisonment. The sentence of life imprisonment and fine of Rs. 5,000/- awarded by the trial court is set aside. Appellants shall be taken into custody by the court concerned to make them serve out the sentence.

(Prafulla C. Pant, J.)

(Irshad Hussain, J.)

Dt: 11th May, 2005

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